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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. 07 CV 2178 W (AJB) **ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendant Spherion Atlantic Enterprises, LLC ("Defendant" or "Spherion"), for itself alone and no other defendant hereby answers the first amended complaint of Plaintiff Philip J. Martinet ("Plaintiff" or "Martinet"), as filed on December 28, 2007 as follows:

1. Answering Paragraph 1, Spherion admits that Plaintiff is a former Spherion employee who was employed by Spherion from July 2007 to August 2007 and was assigned by Spherion to work for one of its clients in San Diego County, California. Spherion lacks sufficient information to admit or deny Plaintiff's remaining allegations and, accordingly, Spherion denies the remaining allegations of this Paragraph other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

2. Answering Paragraph 2, Spherion admits that it is now, and ever since this action commenced has been, a limited liability company formed under the laws of the State of Delaware, with its principal place of business in the State of Florida. Spherion also admits that it owned and/or operated recruiting and staffing offices in California, and recruited and employed California employees. Spherion further admits that it employed Plaintiff. Spherion denies the remaining allegations of this Paragraph other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

3. Answering Paragraph 3, Spherion denies the allegations therein based on a lack of information or knowledge.

4. Answering Paragraph 4, Spherion denies the allegations therein based on a lack of information or knowledge.

5. Answering Paragraph 5, Spherion denies the allegations therein based on a lack of information or knowledge.

6. Answering Paragraph 6, Spherion denies the allegations therein based on a lack of information or knowledge as to the identity of the "officers, directors, agents, employees, or representatives of the Defendants." Spherion denies the remaining allegations of this Paragraph other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

7. Answering Paragraph 7, Spherion denies the allegations therein based on a lack of information or knowledge as to the identity of "Defendants" or "co-defendants." Spherion denies the remaining allegations of this Paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

8. Answering Paragraph 8, Spherion incorporates its responses to Paragraphs 1 through 7 of the First Amended Complaint herein.

9. Answering Paragraph 9, Spherion admits Paragraph 9.

10. Answering Paragraph 10, Spherion admits that venue is proper for defendant Spherion, but denies on lack of information and knowledge that venue is proper as to any other defendant. Spherion denies Paragraph 10 to the extent it alleges Spherion committed "actionable and unlawful employment practices."

11. Answering Paragraph 11, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Labor Code and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

12. Answering Paragraph 12, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Labor Code and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

13. Answering Paragraph 11, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Labor Code and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

14. Answering Paragraph 14, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Labor Code and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

15. Answering Paragraph 15, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Labor Code and, instead, states that

the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

16. Answering Paragraph 16, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Labor Code and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

17. Answering Paragraph 17, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Labor Code and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

18. Answering Paragraph 18, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Labor Code and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

19. Answering Paragraph 19, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Labor Code and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

20. Answering Paragraph 20, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the Industrial Wage Order and, instead, states that the referenced Wage Order is the best evidence of the legal principles it sets forth and speaks for itself.

21. Answering Paragraph 21, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Business & Professions Code and, instead, states that the referenced Code Section is the best evidence of the legal principles it sets forth and speaks for itself.

22. Answering Paragraph 22, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Business & Professions Code and, instead, states that the referenced Code Section is the best evidence of the legal principles it sets forth and speaks for itself.

23. Answering Paragraph 23, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies, however, Plaintiff's characterization of the California Business & Professions Code and, instead, states that the referenced Code Section is the best evidence of the legal principles it sets forth and speaks for itself.

24. Answering Paragraph 24, Spherion admits that Plaintiff has plead this action as a putative class action. Spherion denies, however, that this action is properly advanced as a class or collective action.

25. Answering Paragraph 25, Spherion admits that Plaintiff seeks to certify the putative classes identified. Spherion denies, however, that this action is properly advanced as a class or collective action.

26. Answering Paragraph 26, Spherion denies the allegations therein, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

27. Answering Paragraph 27, Spherion denies all allegations contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

28. Answering Paragraph 28, Spherion denies all allegations contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny)..

29. Answering Paragraph 29, Spherion admits the allegation in subparagraph a. as to the reference to Spherion's website. Spherion denies the remainder of the allegations in this Paragraph and subparagraphs, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

30. Answering Paragraph 30, Spherion denies each and every allegation contained in this paragraph including the allegations alleged in subparagraphs a.-p, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

31. Answering Paragraph 31, Spherion incorporates its responses to Paragraphs 1 through 30 of the First Amended Complaint herein.

32. Answering Paragraph 32, Spherion denies each and every allegation contained in this paragraph.

33. Answering Paragraph 33, Spherion denies each and every allegation contained in this paragraph.

34. Answering Paragraph 34, Spherion denies each and every allegation contained in this paragraph.

35. Answering Paragraph 35, Spherion need not admit or deny allegations concerning damages. Notwithstanding the foregoing, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

36. Answering Paragraph 36, Spherion incorporates its responses to Paragraphs 1 through 35 of the First Amended Complaint herein.

37. Answering Paragraph 37, Spherion admits that some of its employees in California may work hours in excess of eight in one day or forty in one week. Spherion

denies the remainder of the allegations in this Paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

38. Answering Paragraph 38, Spherion admits that Plaintiff has defined the putative "CLASS" as "California based, hourly, non-exempt employees." Spherion denies the remainder of the allegations in the Paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

39. Answering Paragraph 39, Spherion need not admit or deny allegations concerning damages. Notwithstanding the foregoing, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

40. Answering Paragraph 40, Spherion incorporates its responses to Paragraphs 1 through 39 of the First Amended Complaint herein.

41. Answering Paragraph 41, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

42. Answering Paragraph 42, Spherion denies each and every allegation contained in this paragraph.

43. Answering Paragraph 43, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

44. Answering Paragraph 44, Spherion need not admit or deny allegations concerning damages. Notwithstanding the foregoing, Spherion denies each and every allegation contained in this paragraph.

45. Answering Paragraph 45, Spherion incorporates its responses to Paragraphs 1 through 44 of the First Amended Complaint herein.

46. Answering Paragraph 46, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

47. Answering Paragraph 47, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

48. Answering Paragraph 48, Spherion need not admit or deny allegations concerning damages. Notwithstanding the foregoing, Spherion denies each and every allegation contained in this paragraph other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

49. Answering Paragraph 49, Spherion incorporates its responses to Paragraphs 1 through 48 of the First Amended Complaint herein.

50. Answering Paragraph 50, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

51. Answering Paragraph 51, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

52. Answering Paragraph 52, Spherion states that this Paragraph contains only allegations concerning damages (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

53. Answering Paragraph 53, Spherion incorporates its responses to Paragraphs 1 through 52 of the First Amended Complaint herein.

54. Answering Paragraph 54, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

55. Answering Paragraph 55, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

56. Answering Paragraph 56, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

57. Answering Paragraph 57, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

58. Answering Paragraph 58, Spherion incorporates its responses to Paragraphs 1 through 57 of the First Amended Complaint herein.

59. Answering Paragraph 59, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

60. Answering Paragraph 60, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

61. Answering Paragraph 61, Spherion incorporates its responses to Paragraphs 1 through 60 of the First Amended Complaint herein.

62. Answering Paragraph 62, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

63. Answering Paragraph 63, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

64. Answering Paragraph 64, Spherion denies each and every allegation contained in this paragraph, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

65. Answering Paragraph 65, Spherion denies that it "unlawfully withheld funds" or "unlawfully earned profits." Moreover, Spherion states that this Paragraph contains legal conclusions (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves. Notwithstanding the above, Spherion admits that Plaintiff seeks the relief identified in this Paragraph.

66. Answering Paragraph 66, Spherion denies each and every allegation contained in this paragraph.

67. Answering Paragraph 67, Spherion incorporates its responses to Paragraphs 1 through 66 of the First Amended Complaint herein.

68. Answering Paragraph 68, Spherion denies each and every allegation contained in this paragraph, including the allegations contained in subparagraphs i.-xi, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

69. Answering Paragraph 69, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the

referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

70. Answering Paragraph 70, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

71. Answering Paragraph 71, Spherion states that this Paragraph contains only legal conclusions or allegations concerning damages (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

72. Answering Paragraph 72, Spherion states that this Paragraph contains only allegations concerning damages (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

73. Answering Paragraph 73, Spherion admits that on or around September 25, 2007 Plaintiff provided the LWDA with a letter describing Labor Code violations Spherion allegedly violated. Defendant denies the remainder of the allegations in Paragraph 73, other than to the extent the Paragraph states legal conclusions (which Spherion is not required to admit or deny).

74. Answering Paragraph 74, Spherion is without sufficient knowledge or information to form a belief as to the truth of the allegation contained in said paragraph, and on that basis denies each and every allegation contained therein.

75. Answering Paragraph 75, Spherion is without sufficient knowledge or information to form a belief as to the truth of the allegation contained in said paragraph, and on that basis denies each and every allegation contained therein.

76. Answering Paragraph 76, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

77. Answering Paragraph 77, Spherion states that this Paragraph contains only legal conclusions (which Spherion is not required to admit or deny). Spherion denies however, Plaintiff's characterization of California law and, instead, states that the referenced statutes are the best evidence of the legal principles they set forth and speak for themselves.

ADDITIONAL DEFENSES

In further answer to the First Amended Complaint, and as separate and distinct defenses to the purported causes of action set forth in the First Amended Complaint, Spherion alleges the following additional defenses. In asserting these defenses, Spherion does not assume the burden of proof as to matters that, pursuant to law, are Plaintiff's burden to prove.

FIRST DEFENSE

(Failure To State a Cause of Action)

1. As to Plaintiff's First Amended Complaint, or any purported cause of action therein alleged, Plaintiff fails to state facts sufficient to constitute claims upon which relief can be granted against Spherion.

SECOND DEFENSE

(Statute of Limitations)

2. Plaintiff's claims, in whole or in part, are barred by the applicable statutes of limitations, including, but not limited to, Code of Civil Procedure sections 337, 338, 339, and 340 and Business and Professions Code section 17208.

THIRD DEFENSE

(Estoppel)

3. Plaintiff, by his conduct, is estopped to assert any cause of action against Spherion.

FOURTH DEFENSE

(Waiver)

4. Plaintiff's First Amended Complaint, and each and every cause of action alleged therein, is barred by the doctrine of waiver.

FIFTH DEFENSE

(Unclean Hands)

5. Plaintiff's First Amended Complaint, and each and every cause of action alleged therein, is barred by the doctrine of unclean hands.

SIXTH DEFENSE

(Laches)

6. Plaintiff has delayed inexcusably and unreasonably in the filing of this action causing substantial prejudice to Spherion and, thus, Plaintiff's claims are barred by the equitable doctrine of laches.

SEVENTH DEFENSE
(Res Judicata/Collateral Estoppel)

7. The First Amended Complaint is barred by the doctrines of res judicata and/or collateral estoppel to the extent that Plaintiff, any class member or other putative beneficiary of this action has asserted in any prior legal or administrative proceeding that

he or she was entitled to unpaid overtime, additional payment for meal periods, and or penalties and did not prevail on such claim.

EIGHTH DEFENSE

(No Discharge or Quit)

8. Because the ending of Plaintiff's temporary assignment with Spherion does not qualify as a "discharge" under Labor Code section 201, Plaintiff is ineligible to recover penalties under Labor Code section 203.

NINTH DEFENSE

(No Willful Violation of Labor Code, section 203)

9. Plaintiff's Complaint is barred because Spherion cannot be held to have willfully failed to comply with the requirements of Labor Code sections 201 or 203.

TENTH DEFENSE

(Good Faith Dispute)

10. Plaintiff is not entitled to any Labor Code section 203 waiting time penalties because a good faith dispute exists as to the monies allegedly owed, such that Spherion cannot be held to have willfully failed to comply with the requirements of Labor Code section 201.

ELEVENTH DEFENSE

(Due Process)

11. Plaintiff's claims under B&P Code § 17200 *et seq.* violated defendant's constitutional right to due process to the extent the claims do not afford defendant protections against multiple suits and duplicative liability ordinarily provided by class actions.

TWELFTH DEFENSE

(Non-Certifiable Class)

12. The Complaint does not state facts sufficient to certify a class and this action is not properly brought as a class or collective action.

THIRTEENTH DEFENSE

(Claims are Moot)

13. Plaintiff's claims fail because they are moot.

FOURTEENTH DEFENSE

(Failure to Exhaust Administrative Remedies)

14. Plaintiff's First Amended Complaint and each and every cause of action attempted to be stated therein are barred to the extent that Plaintiff or other putative beneficiaries of this action have failed to exhaust their administrative remedies prior to commencing this action.

FIFTEENTH DEFENSE

(Remedies at Law)

15. Plaintiff or other putative beneficiaries of this action are not entitled to the equitable relief sought insofar as they, and each of them, have an adequate remedy at law.

SIXTEENTH DEFENSE

(Offset)

16. To the extent that Plaintiff or other putative beneficiaries of this action have received other benefits and/or awards attributable to an injury for which they seek compensation in this case, such benefits and/or awards should offset, in whole or in part, any award they may receive in this action for the same injury.

SEVENTEENTH DEFENSE

(Labor Code 2856)

17. The First Amended Complaint and each cause of action attempted to be stated therein are barred in whole or in part to the extent that Plaintiff or any class member or putative beneficiary of this action failed to substantially comply with all the directions of defendant, and such failure proximately caused the alleged losses for which they seek relief.

EIGHTEENTH DEFENSE

(Penalties Unconstitutional on Their Face)

18. If it were to be determined that Plaintiff was entitled to assert claims for civil penalties under Labor Code section 2699 *et seq.* for alleged Labor Code violations, such claims are unconstitutional on their face pursuant to Article I, Section 10, Article IV, Section 2, and the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, and Article I, Sections 7, 9, 15 and 17, and Article IV, Section 16, of the California State Constitution.

NINETEENTH DEFENSE

(Penalties Unconstitutional as Applied)

19. If it were determined that Plaintiff was entitled to assert claims for civil penalties under Labor Code section 2699 *et seq.* for alleged Labor Code violations, such claims are unconstitutional as applied pursuant to Article I, Section 10, Article IV, Section 2, and the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, and Article I, Sections 7, 9, 15 and 17, and Article IV, Section 16, of the California State Constitution.

TWENTIETH DEFENSE

(Reservation of Rights)

20. Defendant does not presently know all of the facts and circumstances respecting Plaintiff's claims. Defendant therefore reserves the right to amend this answer should it later discover facts demonstrating the existence of additional affirmative defenses.

PRAYER

WHEREFORE, Spherion Atlantic Enterprises LLC prays for judgment as follows:

1. That Plaintiff take nothing by his First Amended Complaint;

2. That Plaintiff's request for an order certifying a proposed class is denied;

3. That judgment be entered in favor of Spherion and against Plaintiff on all causes of action;

4. That Spherion be awarded reasonable attorneys' fees, as permitted by statute or contract, according to proof;

5. That Spherion be awarded the costs of suit incurred herein; and

6. That Spherion be awarded such other and further relief as the Court may deem appropriate.

DATED: January 7, 2008

SEYFARTH SHAW LLP

By /s/ Samuel T. McAdam
Samuel T. McAdam
Alfred L. Sanderson, Jr.
Attorneys for Defendants
SPHERION ATLANTIC ENTERPRISES LLC